

addressed to the credit of the complainant would have been especially relevant. The learned President had forbidden "all questions relating to the character of the complainant". It is not at all clear what the grounds are for disallowing such questions and in the circumstances it is not possible to decide whether in disallowing any such cross-examination of the complainant the learned President had addressed his mind to the provisions of sections 146, 148 to 152 of the Evidence Ordinance.

I cannot help feeling that the appellant has been prejudiced in his defence and that there must be a retrial.

The appeal is allowed. The case will be remitted to the Sessions Court for retrial before another President.

Appeal allowed. Retrial ordered.

Solicitors: S. M. Yong & Co.

PUBLIC PROSECUTOR v. BONG SWEE KONG

[A. Cr. J. (Ismail Khan J.) February 1, 1962]

[Malacca — Criminal Appeal No. 8 of 1961]

Road Traffic Ordinance, 1958, ss.2 and 98 — Motor cycle used for carriage of goods without carrier's licence — Whether motor cycle is a "goods vehicle" — Meaning of "goods" — "Goods vehicle."

On a charge under section 98(1) of the Road Traffic Ordinance, 1958 the onus on the prosecution is to establish that the respondent was carrying on his "motor vehicle", "goods" within the meaning of section 2 of the Ordinance. Whether the "goods" were carried for the respondent's trade or business is a matter of inference to be made from the circumstances of the case such as the nature of the respondent's business and the kind of goods carried.

Cases referred to:—

(1) *Khoo Teck Yam v. Public Prosecutor* [1955] M.L.J. 113.

(2) *Chua Lai Seng v. Public Prosecutor* [1961] M.L.J. 144.

CRIMINAL APPEAL.

Mohd. Salleh bin Abas (Deputy Public Prosecutor) for the appellant.

Respondent in person.

Cur. Adv. Vult.

Ismail Khan J.: The respondent was charged with using a motor cycle for the carriage of goods without having a carrier's licence contrary to section 98(1) of the Road Traffic Ordinance, No. 49 of 1958.

The facts which are not in dispute are as follows: The respondent is a sundry goods shopkeeper at the 7th mile Durian Tunggal, Malacca. On 30th December, 1960, he was riding his motor cycle at Hill Road, Malacca, when he was stopped by a police constable P.W.1. He was found carrying on the carrier of his motor cycle a basket containing chillies, brushes, beans, mee-hoon and fruits. It was a big basket and with

A the commodities weighed about 50 katties. The respondent had a licence for his motor cycle but no carrier's licence.

The learned Magistrate acquitted and discharged the respondent without calling for his defence.

This appeal is against the order of acquittal.

B The relevant provisions of the Ordinance are as follows:—

Section 98(1) reads:—

C "Subject to the provisions of this Part of this Ordinance no person shall use a motor vehicle, or cause or permit a motor vehicle to be used, for the carriage of goods unless there is in force in respect of such vehicle a valid carrier's licence granted under this Part of this Ordinance"

Section 2 defines "motor vehicle", "goods vehicle", "goods" as follows:—

"motor vehicle" means every description of vehicle propelled by means of mechanism contained within itself and constructed or adapted so as to be capable of being used on roads, and includes a trailer;

D "goods vehicle" means —

(a) any motor vehicle constructed or adapted for use for the carriage of goods; and

(b) any motor vehicle not so constructed or adapted when used for the carriage of goods solely or in addition to passengers;

but does not include a private motor car drawing a trailer for purposes unconnected with trade or business;

E "goods" means anything, including livestock, carried on or in a motor vehicle for the purposes of any trade or business but does not include —

(a) equipment ordinarily used with the vehicle;

(b) articles of merchandise carried by a person on or in the vehicle solely for the purpose of exhibition as samples;

F (c) articles carried by a person on or in the vehicle for use in the exercise of his trade, business or profession and not for sale.

G In his grounds of judgment the learned Magistrate expressed his doubts as to whether a motor cycle is within the meaning of the definition of "goods vehicle". He is inclined to the view that it is not, unless the motor cycle is constructed and adapted for use for the carriage of goods. I cannot see anything in the definition to support this view. According to the definition a goods vehicle may be constructed and adapted for use for the carriage of goods, and if not so constructed and adapted for such use, it becomes a goods vehicle when used for the carriage of goods solely or in addition to passengers. It is clear that the only type of vehicle excepted from the definition is a private motor car drawing a trailer for purposes unconnected with any trade or business. There is no other exception.

H The learned Magistrate also held that the mere carriage of goods by the respondent is no offence as it is only an "act in the course of his trade or business but that he commits an offence if he in the course of carrying sells" the goods. In my opinion this is to misread the definition of the word "goods". The learned Magistrate evidently had in mind exception (c) in the definition. This exception and the other two exceptions are irrelevant for consideration in this

case. The onus on the prosecution is to establish that the respondent was carrying on his motor cycle goods, that is, goods within the meaning of section 2 of the Ordinance. Whether the goods carried were for the purpose of the respondent's trade or business is a matter of inference from the circumstances of the case such as the nature of the respondent's business and the kind of goods carried. (See the observations of Buhagiar J. in the case of *Khoo Teck Yam v. Public Prosecutor* ⁽¹⁾). In this case there is evidence that the respondent is a sundry goods shopkeeper and on the day in question he was carrying about 50 katties of various commodities in his basket. There is therefore in my opinion sufficient material for the inference that these goods were in connection with his trade or business.

It is well to bear in mind the object of the relevant sections of this Ordinance which is, as stated by Rigby J. in the case of *Chua Lai Seng v. Public Prosecutor* ⁽²⁾, "to increase the revenue of the country by making it incumbent upon persons who wish to use their vehicles for the carriage of goods to pay a higher licensing fee for such a purpose and, by the same token, to protect from unfair competition the legitimate interests of *bona fide* carriers of goods for reward or hire who have paid the higher licensing fee required for such a purpose".

The appeal is allowed. The order of acquittal is set aside and the case is to be sent back to the Magistrate's Court for the defence to be called.

Appeal allowed.

WONG PENG YUEN v. SENANAYAKE

[O.C.J. (Wee Chong Jin J.) February 3, 1962]

[Singapore — Suit No. 1236 of 1959]

Partnership — Share brokers — Payment of money in consideration of being made partner — Subsequent holding out as partner — No powers in control or management of business — Losses incurred by remiser — Dissolution of partnership — Claim of money paid — Whether recoverable — Partnership Act, 1890, s.24.

The defendant and one Goh were the partners of a firm of stock and share brokers. On March 26, 1959 they executed a partnership deed by which the said Goh transferred \$14,000 worth of shares in the capital of the said firm to each of his two infant children. On April 3, 1959 the said partners executed a partnership deed by which one Tan became a partner of the said firm. On April 30, 1959 the plaintiff paid the defendant the sum of \$20,000 in consideration that he be made one of the partners of the said firm. The plaintiff then thought and acted as if he was a partner although he never had anything to do with the management or control of the business of the said firm. Meanwhile a remiser of the firm speculated on shares and owed the firm approximately \$91,000. Subsequently on notice being given for the dissolution of the firm on July 3, 1959, the plaintiff in order to avoid the burden of sharing the considerable losses suffered by the remiser claimed the return of \$20,000 on the ground that the plaintiff was never a partner of the firm because (a) when the partnership was dissolved the Malayan Sharebrokers Association had never granted permission for the admission of the plaintiff as a partner, and (b) that Tan and the two infants had never consented to his admission as a partner.

A Held: (1) the first contention failed because although the firm was a member of the Association, the plaintiff was not contracting to become a member of the Association but the firm;

(2) Tan's consent was given subsequent to April 30, 1959 and further consent of the two infant children were not necessary because the deed of the March 26, 1959 was merely an assignment by Goh to his infant children a share in the partnership and this did not confer on them the rights of a partner in the said firm.

B ACTION.

K. Gould (Robert S. A. Hsieh with him) for the plaintiff.

L. A. J. Smith for the defendant.

C Wee Chong Jin J.: This action is a quasi-contractual one in that the plaintiff is claiming the return of \$20,000 being moneys had and received by the defendant to the use of the plaintiff. The particulars set out in the specially endorsed Writ are as follows:—

D "A few days prior to the 30th April, 1959 the plaintiff entered into negotiations with the defendant with the object of becoming a partner in the firm of 'Sena & Goh' of which the defendant was himself a partner at all material times. As a step in the said negotiations the plaintiff on the 30th April, 1959 by the direction of the defendant paid to the firm of Sena & Goh the sum of \$20,000 and the said Sena & Goh received the said sum of \$20,000 as agents for the defendant. The said sum of \$20,000 was paid to the defendant in consideration of the plaintiff being made a partner with the then existing partners of the said firm of Sena & Goh. In fact the plaintiff was never made a partner and at no time became a partner in the said Sena & Goh. On or about the 30th June, 1959 the plaintiff verbally informed the defendant that he, the plaintiff, did not wish to become a partner and that he did not wish to continue negotiations for a partnership further. The plaintiff has demanded the return of the said sum of \$20,000 but the defendant has failed to pay the same."

F The firm of Sena & Goh came into existence on the 18th October, 1955 when on that date the defendant and one Goh Teck Tiong entered into a partnership agreement by deed to become partners in the business of stock and share brokers under the name and style of "Sena & Goh" at No. 22 Market Street, Singapore with a capital of \$100,000, of which the defendant was to contribute \$51,000 and Goh Teck Tiong was to contribute \$49,000. At that date and at the date of the institution of the action there was an association known as the Malayan Sharebrokers' Association consisting of approximately 20 members which had as one of its principal objects the regulation and control of methods by which the business of stock and share brokers in Malaya (comprising Singapore and the Federation of Malaya) is to be carried on.

H By Rule 4(1) any individual carrying on business alone as a stock and share broker or any number of individuals carrying on business together in partnership as stock and share brokers shall be eligible as a member and a firm shall become a member in its conventional name.

I By Rule 4(5) no member shall carry on business in stocks, shares or bonds with any stock, share or bond broker in Malaya who is not a member of the Association.